

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION**

PAUL J. CASTRO,

Plaintiff,

v.

DAVID GOGGINS,

Defendant.

Civil Action No. 1:16-cv-10

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

COMES NOW defendant David Goggins, by and through counsel, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rules 7.2 and 7.3, and moves for the Court to enter an Order granting summary judgment in favor of defendant dismissing plaintiff’s breach of contract claim as alleged in the Complaint. In support of this motion, defendant states as follows:

1. Plaintiff’s Complaint alleging a breach of contract as its sole claim for relief.
2. There was never a valid, enforceable contract established between the parties addressing material terms of an agreement.
3. As grounds for this motion, defendant shows the court that the depositions, pleadings, and other discovery responses demonstrate that there is no genuine breach of contract and plaintiff’s breach of contract claim as alleged in the Complaint should be dismissed with prejudice.
4. Defendant provides the following exhibits:

- A. The deposition transcript of Paul Castro;
- B. Excerpts from the David Goggins deposition transcript: pp. 8-13, 18, 37-39, 42 114, 121-122, 133-134, 139, 148, 200-209, and 220-22;
- C. Exhibit 1 to the David Goggins deposition;
- D. Exhibit 16 to the David Goggins deposition;
- E. Exhibit 17 to the David Goggins deposition;
- F. Exhibit 19 to the David Goggins deposition;
- G. Plaintiff's Initial Disclosures;
- H. Plaintiff's Answers and Responses to Defendant's First Set of Interrogatories and First Request for Production of Documents;
- I. Plaintiff's Rule 26(a)(2) Disclosures;

Submitted herewith are the following unpublished opinions in support of this motion:

- J. *Yates v. Med. Specialties, Inc.*, No. 3:11-cv-6, 2012 U.S. Dist. LEXIS 178736 (W.D.N.C. Dec. 17, 2012);
- K. *Beydown v. Clark Constr. Int'l, LLC*, 72 Fed. Appx. 907, at *912-13 (4th Cir., July 25, 2003);
- L. *Premier Signatures Int'l v. Feld Entertainment Prods., Inc.*, 1999 U.S. App. LEXIS 14028 (4th Cir., June 25, 1999);
- M. *Silicon Knights, Inc. v. Epic Games, Inc.*, No. 5:07-cv-275, 2012 U.S. Dist. LEXIS 63707 (E.D.N.C. May 7, 2012);
- N. *Montilla v. Walmart Stores, Inc.*, 2:13-cv-2348 (D. Nev. Sept. 16, 2015);

O. Columbia Cas. Co. v. Neighborhood Risk Management Corp., 14 Civ. 48

(S.D.N.Y. Jan 14, 2016).

In further support of this Motion, defendant incorporates by reference as if fully set forth herein, Brief in Support of Defendant's Motion for Summary Judgment filed contemporaneously herewith.

WHEREFORE, defendant respectfully requests this Court to enter an Order granting summary judgment in favor of defendant, dismissing Plaintiff's breach of contract claim with prejudice.

Respectfully submitted, this the 15th day of May, 2017.

/s/ Andrew L. Fitzgerald
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

This the 15th day May, 2017.

/s/ Andrew L. Fitzgerald

Andrew L. Fitzgerald